

RECEIVED
CENTRAL FAX CENTER

12:07:56 p.m.

10-06-2006

6 / 7

OCT 06 2006

DOCKET NO. 4121-169

REMARKS

In a telephone call from Examiner Noakes to the undersigned attorney on August 30, 2006, a restriction requirement was imposed against pending claims 1-13, requiring election among:

- Group I: Claims 1-5, 7 and 8, drawn to isolated nucleic acid molecules encoding cyplasin (claims 1-5) and to methods of making proteins exhibiting properties of cyplasin (claims 7 and 8);
- Group II: Claims 6, 12 and 13, drawn to isolated proteins; and
- Group III: Claims 10 and 11, drawn to pharmaceutical compositions containing isolated nucleic acid molecules encoding cyplasin.

In response, Applicant elects Group II including claims 6, 12 and 13, drawn to an isolated cyplasin protein and pharmaceutical compositions containing the same. Such election is made WITH TRAVERSE, for the reasons set out below.

It is noted that claim 9 was not included in the grouping of the claims. As claim 9 is dependent from the method of claim 8, it is assumed that claim 9 should have been grouped with claim 8.

Additionally, claims 7, 8 (and 9) should not have been grouped with claims 1-5, since they are more appropriately classed with the Group II claims. Claims 1-5 are directed to isolated nucleic acid molecules encoding cyplasin and claims 7-9 are directed to methods of making proteins exhibiting properties of cyplasin. The examiner therefore is requested to reconsider and redesignate the claim groups, to consolidate claims 7-9 with claims 6, 12 and 13 in Group II.

Request for Rejoinder

In the event that the restriction requirement is made final, Applicant responsively requests rejoinder of method claims 7, 8 and 9 (Group I) with the protein claims, under the provisions of MPEP §821.04, upon confirmation of allowable subject matter in the composition claims 6, 12 and 13 of Group II.

RECEIVED
CENTRAL FAX CENTER
OCT 06 2006

12:08:22 p.m.

10-06-2006

7 /7

DOCKET NO. 4121-169

Such rejoinder would be fully proper under these circumstances. When an application as originally filed discloses a product and the process for making and/or using such product, and only the product claims are examined, when the product claims are found allowable, an applicant may present claims directed to the process of making and/or using the patentable product for examination by rejoinder under MPEP §821.04, provided that the process claims depend from or otherwise include all the limitations of the allowed product claims.

In the present application, the elected claims 6, 12 and 13 are directed to isolated proteins and the claims 7, 8 and 9 are directed to methods for making such isolated proteins. Consistent with the provisions of the MPEP §821.04, when the product claims 6, 12 and 13 are subsequently found allowable, any withdrawn method of making and/or using claims in Groups I and III are properly rejoined for examination.

CONCLUSION

In response to the Requirement for Restriction of August 30, 2006, Applicants have provisionally elected, with traverse, Group II, claims 6, 12 and 13, drawn to isolated proteins.

New claims 14 and 15 have been added. No new matter (35 U.S.C. § 132) has been introduced.

If any additional issues remain, the Examiner is requested to contact the undersigned attorney at (919)419-9350 to discuss same, in order that the prosecution of this application is expedited.

Respectfully submitted,



Steven J. Hultquist
Reg. No. 28,021
Attorney for Applicants

INTELLECTUAL PROPERTY/
TECHNOLOGY LAW
Phone: (919) 419-9350
Fax: (919) 419-9354
Attorney File No.: 4121-169

The USPTO is hereby authorized to charge any deficiency or credit any overpayment of fees properly payable for this document to Deposit Account No. 08-3284